

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2007-22889
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 7, 2008
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice a telephone conference hearing was held on February 7, 2008.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA-P) application?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On 2/7/07, claimant applied for MA-P with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 7/13/07, the MRT denied.
- (4) On 7/23/07, the DHS issued notice.
- (5) On 8/3/07, claimant filed a hearing request.

(6) Claimant represented at the administrative hearing that she applied for RSDI in February, 2005 and was denied in August, 2005.

(7) On 11/16/07, [REDACTED] with the State Hearing Review Team denied claimant MA-P eligibility. A review of the decision by [REDACTED] indicates that [REDACTED] was reviewing a different client than claimant. The undersigned Administrative Law Judge returned the file to SHRT requesting a review of the proper client along with Claimant Exhibit A, which was new medical documentation. Pursuant to a subsequent review, on 2/13/08 SHRT denied the claimant.

(8) As of the date of application, claimant was a 35 year-old female standing 5; 11” tall and weighing 292 pounds. Claimant’s BMI is 40.7, morbid obesity. Claimant has a high school diploma. Claimant represented that she was in Special Education in all subjects from the 1st grade to graduation.

(9) Claimant testified that she does not smoke.

(10) Claimant testified that she does not have an alcohol/drug abuse problem or history.

(11) Claimant has a driver’s license and can drive a motor vehicle.

(12) Claimant is not currently working. Claimant last worked in May of 2005 at [REDACTED] as a production line worker.

(13) Claimant alleges disability on the basis of sarcoidosis. Other medical evidence in the file indicates complaints of knee pain, joint pain, asthma, depression, and glaucoma.

(14) The 11/16/07 SHRT decision is not relevant as it assesses a different client than claimant.

(15) The 2/13/08 subsequent SHRT decision is adopted and incorporated to the following extent:

CT scan of chest x-ray 7/05 indicates finding consistent with history of sarcoidosis. Exhibit 35. Chest x-ray of 10/05 reports lungs clear other than scarring in left upper lobe. Chest x-ray of 3/06 reports identical findings. Exhibits 31, 34.

Bilateral knee x-rays of 2/06 report findings consistent with old post-traumatic changes and degenerative changes. Exhibit 32.

Treatment note of 2/07 indicate.... partial exam within normal limits. Lungs were clear, heart sounds normal. Sarcoid and asthma considered stable. Given Prozac to help mood. Exhibit 16....

Newly submitted note from treating physician of 12/05/07 indicates claimant requires ongoing treatment in order to stay stabilized.

- (16) Other medical evidence includes:
- (a) A social summary completed on 6/21/07 indicates the only alleged impairment was sarcoidosis. Exhibits 6 and 7.
 - (b) Claimant lists her physicians at applications as treatment for sarcoidosis only. Exhibits 8 and 9.
 - (c) Activities of daily living form indicates claimant reports watching 6 hours of TV per day and does not read. Exhibit 12.
 - (d) Numerous clinical record notes from 2005 to 2007 repeatedly indicate that claimant is an obese female in no acute distress. The physician repeatedly indicates that claimant is stable, has sarcoidosis, obesity, and joint pain. Plan of care repeatedly indicates weight reduction. Claimant was not interested in a nutritional consultant; has 5/5 strength in lower proximal and distal extremities; claimant has excessive weight that can be potentially exacerbating osteoarthritis; no active wheezing; the physician reports negative EKG. Exhibits 16-27.
 - (e) A full lab report indicates claimant has high cholesterol. Exhibit 28.
 - (f) PA and lateral chest x-rays showed scarring in the upper lobe without any acute cardiopulmonary disease. Exhibit 31.
 - (g) PA and lateral chest x-rays indicate sarcoidosis; asthma. No significant cardiopulmonary abnormality or change compared to 7/24/05. Exhibit 34.

(h) CT chest x-ray with contrast on 7/26/05 reports no evidence of pulmonary embolus; consistent interval regression with the sarcoidosis.

(17) New medical evidence includes:

A December 5, 2007 letter from claimant's primary care physician [REDACTED] [REDACTED]. The physician notes that claimant's sarcoidosis of the lung requires inhalers every day and some oral medications to avoid falling into respiratory distress and being hospitalized. The physician notes that claimant needs to continue on her medication otherwise her condition will worsen. Claimant also has asthma and pulmonary fibrosis. The physician notes that claimant's disease: '...has prevented her from performing the factory work she used to do.' Claimant Exhibit A.1.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines.

These federal guidelines state in part:

"Disability" is:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that

you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

At application claimant has the burden of proof pursuant to:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram,

electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

It is noted that Congress removed obesity from the Listing of Impairments shortly after the removal of drug addition and alcoholism. This removal reflects the view that there is a strong behavioral component to obesity. Thus, obesity in-and-of itself is not sufficient to show statutory disability.

Applying the sequential analysis herein, claimant is not ineligible at the first step as claimant is not currently working. 20 CFR 416.920(b). Claimant has not worked since May of 2005. At that time, claimant collected LTD for a period of two years. At the point of termination, claimant applied for MA with the Michigan DHS. Claimant is not ineligible at the first step and thus, the analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in

claimant's favor, this Administrative Law Judge (ALJ) finds that claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by claimant in the past. 20 CFR 416.920(e).

Claimant's last relevant work was working as a line worker in production work. Claimant's treating physician indicates that she is unable to return to her past relevant work due to her condition primarily of sarcoidosis. Thus, this Administrative Law Judge finds that claimant cannot return to past relevant work on the basis of the medical evidence. The analysis continues.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(f). After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant can do other work on the basis of Medical Vocational Grid Rule 203.28 for the reasons set forth below.

First, it is not sufficient that claimant simply cannot return to past relevant work to be eligible for statutory disability under the federal and state law. Giving claimant's treating physician controlling weight pursuant to 20 CFR 416.927(d)(2), this ALJ has already found and agreed with the treating physician that the medical evidence supports that claimant cannot return to past relevant work. However, there must be a showing that claimant cannot do other work.

The medical evidence indicates that claimant has an extreme obesity problem which is exacerbating her other problems. However, as already noted, obesity does not entitle one to

statutory disability by itself. There must be sufficient medical documentation to indicate that an individual could not do other work. Claimant has repeatedly been instructed to lose weight and begin nutritional counseling. Per Exhibit 16-27, claimant has declined. Regarding claimant's high cholesterol, high cholesterol is not considered statutorily disabling.

Other medical evidence indicates that claimant has degenerative changes in her knees. Degenerative changes are generally considered aging changes. The law does not recognize normal aging as disabling.

Referring to the Medical Vocational Grids, claimant is only 35 years old. Federal and state law classify a 35 or 36-year-old as a "younger individual." Applying claimant's biographical data, SHRT found that claimant could do other work based on 203.28. This Administrative Law Judge has given claimant the benefit of a doubt as she was in Special Education and refers to the grid which indicates that claimant's biographical data does not provide for direct entry into skilled or unskilled work. Pursuant to 203.25, a finding of not disabled is required. The medical evidence fails to meet the statutory requirements found at 20 CFR 416.913(b), .913(d), and .913(e). Statutory disability is not shown.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were correct.

Accordingly, the department's determination in this matter is UPHELD.

/s/

Janice G. Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 6, 2009

Date Mailed: April 6, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

JGS/cv

cc:

